

Court of Appeals, State of Michigan

ORDER

William B. Murphy, C.J.
Presiding Judge

Big D's Properties LLC v Department of Transportation

Jane E. Markey

Docket No. 304533

Jane M. Beckering
Judges

LC No. 10-012538-AA

The Court orders that the motion to dismiss pursuant to MCR 7.211(C)(2) is GRANTED for the reason that the claim of appeal is not within the Court of Appeals jurisdiction because the May 19, 2011 circuit court order constitutes, in its entirety, an order entered on appeal from an administrative tribunal and, thus, is not appealable of right. MCR 7.203(A)(1)(a). Despite the captioning and format of appellant's initial filing in the circuit court, it is manifest that, objectively viewed, the initial filing was treated by the circuit court only as the filing of an appeal, not as the filing of both an appeal and an original complaint. Particularly, the circuit court docket entries reflect that no summons was issued by the circuit court clerk's office as required with the filing of a complaint, MCR 2.102(A). Moreover, only a single \$150 filing fee was collected by the circuit court clerk's office for the filing of an appeal without the additional \$150 filing fee that would have been required for filing a new civil action. See MCL 600.2529(1)(a)-(b). Further, the circuit court properly treated the initial filing as only constituting an appeal because it would have been neither necessary nor appropriate for appellant to have filed a new civil action in the circuit court in addition to its appeal from the administrative tribunal because appellant's constitutional issues were properly presented for resolution by the circuit court in the appeal even though they were outside the authority of the administrative law judge to resolve. *Womack-Scott v Dep't of Corrections*, 246 Mich App 70, 80-81; 630 NW2d 650 (2001).



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

OCT 12 2011

Date


Chief Clerk